

Written evidence submitted by Charlotte Wadsworth MCIPR (Freelance Communications Manager)

Introduction and summary

I am responding to the call for evidence as an individual.

I am a communications freelancer. I work PAYE through an agency on short-term contracts.

I believe I am eligible for support from the government through the Coronavirus Job Retention Scheme (CJRS), but my 'deemed employer' (the agency Reed) has refused to furlough me, meaning I am unable to access this support.

My experience has made me realise that many other PAYE agency workers are likely to be in the same position: on-the-face-of-it covered by the CJRS, but unable to receive support without the agreement and participation of their 'deemed employer'.

I am submitting this evidence to bring this problem to the committee's attention, in the hope that the committee will investigate the causes and extent of the problem and recommend a solution to the government.

The Treasury Committee's interim report of 15 June 2020, [Gaps in Support](#), already addressed this issue in the section [Freelancers and short-term contractors](#):

"47. In some industries, such as television and theatre, short-term PAYE contracts lasting just weeks or months are the norm, often combined additionally with some self-employed work. The impact of the virus for many freelance workers has meant that they have either been released from their contracts or have not had them renewed as would ordinarily have happened. Entitlement to support under either the SEISS or Job Retention Scheme is not available for many of these individuals either because:

...their employer does not want to apply for support under the scheme on their behalf."

The report proposed a solution (point 53.) that would work for people in my position.

However, I think it would be helpful for the report to:

1. Note that people in many industries work on short-term contracts
2. Note that these people may be employed directly by an employer, or deliver work for a client through an agency or umbrella company
3. Recommend that the solution applies to all people in short-term contracts who are eligible for support under the CJRS, but whose employer (or 'deemed employer' in the case of an agency or umbrella company) refuses to furlough them

Terms of Reference

My evidence addresses these points in the TOR, re the Coronavirus Job Retention Scheme (CJRS) only (not SEISS):

Job Protection Scheme and Self-employment Income Support Scheme

- What problems (if any) are individuals facing in claiming support from the Job Protection Scheme and the Self-employment Income Support Scheme?
- How successful has the Government been in plugging the gaps in the schemes?
- What gaps in coverage still remain and are changes required to increase their effectiveness?

Working as a PAYE freelancer - how I work and get paid

I have been a freelance communications manager since 2006. I work on contracts that are usually a few months to several months in length. I work PAYE through an agency. (The client pays the agency a daily rate, from which the agency takes their commission and pays me PAYE.) The agency is my employer - the government's CJRS guidance calls this a 'deemed employer'. I work in consecutive contracts, so only have one employer at a time. Currently, my employer is Reed.

In a few contracts in the past, I have been paid through an umbrella company. This has been when the agency does not offer PAYE as an option, so the umbrella company acts as an intermediary and processes the payroll. The agency pays the umbrella company (the rate from the client minus their commission), then the umbrella company pays me PAYE (deducting their fee and the employer's NI and pension contributions, as well as the employee's tax, NI and pension contributions). If you are paid through an umbrella company, they are your 'deemed employer'. This is not currently my situation, but I am mentioning it here as I believe some people have had a similar situation with umbrella companies as I have had with my agency.

As the #GapsInSupport report says, some PAYE freelancers also do some self-employed work. However, I only work PAYE.

My work situation as the coronavirus crisis unfolded

I did an assignment through Reed from April to the end of November 2019. I had accrued a considerable amount of holiday pay, so I was paid annual leave up to late December. I am still on Reed's timesheet/payroll system, so Reed is still my 'deemed employer'.

I began actively looking for my next assignment in early 2020.

At the time the lockdown was announced, I did not have an assignment and it was clear to me the impact the crisis was having on recruitment - for example, an advertised assignment with the client I had worked at most recently, for which I was well-qualified, was pulled due to coronavirus.

I was therefore very relieved that PAYE agency workers were eligible to receive support from the government through the Coronavirus Job Retention Scheme.

I contacted Reed on 29 March to request to receive wages for a period of furlough through the CJRS.

Support for PAYE agency workers: the government's position

The government's CJRS guidance makes it clear that agency workers are eligible:

<https://www.gov.uk/guidance/check-which-employees-you-can-put-on-furlough-to-use-the-coronavirus-job-retention-scheme>

Agency Workers (including those employed by umbrella companies)

Where agency workers are paid through PAYE, they are eligible to be furloughed and receive support through this scheme, including where they are employed by umbrella companies.

Furlough should be agreed between the agency, as the deemed employer, and the worker, though it would be advised to discuss the need to furlough with any end clients involved. As with employees, agency workers should perform no work for, through or on behalf of the agency that has furloughed them during hours which you record them as being on furlough, including performing such work through or on behalf of the agency for the agency's clients.

Where an agency supplies clients with workers who are employed by an umbrella company that operates the PAYE, it will be for the umbrella company and the worker to agree whether to furlough the worker or not.

This applies to all employees:

Employees you can claim for

You can only claim for furloughed employees that were employed on 19 March 2020 and who were on your PAYE payroll on or before 19 March 2020. This means a Real Time Information (RTI) submission notifying payment in respect of that employee to HMRC must have been made on or before 19 March 2020.

In addition, both the chancellor and prime minister have made statements supporting the use of the furlough scheme for agency workers:

1)

Rishi Sunak asserted, via the Treasury (in response to a question from Martin Lewis):
"Absolutely they can be furloughed... and the guidance is clear - if you were on payroll you can be furloughed even if you work for an agency, umbrella company or are a supply teacher."

2)

At [PMQs on 17 June 2020](#) Alan Brown MP asked the prime minister about an agency that had not furloughed workers and the need for clarification from HMRC and an extension to the furlough deadline:

(Text from [Hansard: Engagements 17 June 2020](#))

Alan Brown (Kilmarnock and Loudoun) (SNP)
"As if BA's behaviour has not been bad enough, an agency in its supply chain, Shorterm, did not pay staff during the covid crisis, claiming that it was awaiting clarification from HMRC about furlough. The workers could not access benefits and have now been made redundant after 10 weeks of zero income. Will the Prime Minister ensure that HMRC clarifies the matter

and considers an extension to the furlough deadline? If Shorterm is found to be bluffing, what will he do to stop companies treating workers like numbers on a spreadsheet?"

The Prime Minister

"I am concerned about the behaviour of some companies, and many colleagues in the House will have received similar representations from their constituents. I do not want to single anyone out, but it is important that companies recognise that the Government —the taxpayer—have gone to huge lengths to help and to put our arms around UK business. They should do what they can as well to look after their workers in very difficult times, because those workers will stand them in good stead when the economy turns up again."

I therefore believe it is the government's intention that PAYE agency workers are supported through the CJRS. However, I also believe that many agency workers have been unable to access support through this route, and that the government has not yet plugged this gap.

[My experience: my agency refused to furlough me; trying to raise awareness of the problem for PAYE agency workers](#)

On 29 March I asked my agency Reed to furlough me until work was available. My previous assignment had ended but I was still on their payroll system and, as far as I can see from the government guidance, I am eligible - as I highlighted to Reed.

Reed knew, pre-lockdown, that I was available and actively seeking another assignment. Since lockdown, they have not contacted me about any assignments.

Reed refused to furlough me. They listed their own eligibility criteria, which are much more restrictive than the government's, thus limiting who they will furlough.

I followed-up repeatedly (as you can see from the [Appendix: summary of key correspondence](#)) and asked them to reconsider their position.

I asked where the criteria they are using came from. I said I was keen to help find a constructive way forward and asked what the 'blockers' were from Reed's point-of-view.

I said I was keen to propose constructive solutions, for example (if this would help), the government providing more reassurance to agencies on who is eligible.

Unfortunately, Reed chose not to engage in a constructive dialogue with me.

In the absence of any clarity from Reed as to what was driving their decision, I tried to find out what the problems - and solutions - could be for PAYE agency workers.

From the media and online communities, I found out more about groups that had been 'excluded' from government support. I soon became aware that my situation was not unusual and many agency (and umbrella company) workers, though 'included' in the furlough scheme, were being turned down by their 'deemed employers' - including other household-name agencies.

I also realised that many of these people were in roles highly affected by the lockdown, such as hospitality and supply teachers. I realised how massive the impact must be on some of the most insecure workers in the country.

I wrote to Rishi Sunak and the opposition on 3 May (see [Appendix](#)) to ask if the government/opposition were aware of the problem of agencies refusing to furlough workers, and if the problem was being addressed by the government. I asked if the government was speaking to agencies to resolve issues that could be deterring them from helping their workers through the scheme. I asked if the problem could be addressed by compelling agencies to use the scheme for workers who are eligible and want to be furloughed, or enabling eligible workers to claim directly from the government, rather than through their agency.

Unfortunately, I received no reply.

However, I was very grateful that my MP Lyn Brown agreed to contact Reed. This led to an exchange of emails between me and Ian Nicholas, Global Managing Director of Reed Global. I again made my case and highlighted how I am eligible, but Ian Nicholas said their stance is that I do not qualify and that "It is our belief that HMRC would deny any claim from us".

In response to this, Lyn Brown wrote to the Chief Executive of HMRC, seeking clarification as to my eligibility to be enrolled on the Coronavirus Job Retention Scheme.

Unfortunately, it took two weeks to receive a reply from HMRC, and it only included a standard eligibility statement. (I meet these eligibility requirements.)

Lyn Brown has therefore once again raised her concerns with HMRC (on 11 June), requesting a full and complete response that addresses the points she has raised.

We await HMRC's response.

If HMRC confirm my eligibility I do not know if this will persuade Reed to furlough me, or indeed whether it will be in time, as the scheme closes to new entrants on 30 June.

It is now almost three months since I asked Reed to furlough me. As you will see from the summary of key correspondence in the [Appendix](#), I have been very proactive in trying to make progress with this issue, for myself and others. It has taken up a considerable amount of my time and energy. Having the support of my MP has made a big difference, as I suspect without Lyn Brown's involvement I would still be waiting for a reply from Reed to my email of 30 April.

After three months of concerted effort, the CJRS has not delivered support for me (a taxpayer for over 30 years) and the government is yet to plug this gap.

[How widespread is the problem? How many agency workers, eligible for government support through the CJRS, have been turned down by their agency?](#)

I do not know the answers to these questions. However, in the weeks since 29 March I have read experiences shared by many other PAYE agency workers who are eligible for the CJRS, but who have received no support, as their employers have refused to furlough them. This includes people who were in assignments due to continue beyond the date the lockdown began.

I believe the problem is widespread and affects people working in many industries.

I suspect many workers will have been led to believe by their agency that they are not eligible for the furlough scheme when in fact they are, but the agency is choosing to avoid the responsibility. It

is an easier message for the agency to deliver to say, 'you are not eligible' than to say, 'we choose not to support you through the scheme'.

From experiences I have read online, I believe it is also a problem for some umbrella company workers (including supply teachers) and directly-employed PAYE temporary workers (such as hospital 'bank' staff), though I do not know to what extent.

Ian Nicholas, Global Managing Director of Reed Global said they have furloughed ">1,500 Temporaries ". I do not know how many PAYE agency workers are currently on Reed's payroll and what proportion this is of all those who were eligible to be furloughed according to the government's criteria.

[Why haven't agencies \(and other employers of PAYE temporary workers\) furloughed workers who are eligible for support? Potential reasons.](#)

Due to the lack of information I received from Reed, I investigated and considered what the problem or problems might be.

No financial benefit to employer

For an employer of salaried (permanent or fixed-term contract) employees, furloughing an employee reduces the wage bill and provides a cost saving for the employer.

However, agencies and other employers of PAYE temporary workers do not have the same financial motivation to furlough workers.

If you don't pay a worker anyway when they are not working, there is no financial benefit to furloughing, but an added administrative responsibility.

(For an agency, there is a financial benefit to furloughing their own salaried employees, such as recruitment consultants.)

Also, agencies are used to taking a cut of commission from the rate paid for a temporary worker by a client (fair enough - that's how they make their profit) but they can't take this for administering furlough.

I strongly suspect some agencies and other employers of PAYE temporary workers felt they were lumbered with the CJRS and had little enthusiasm for using the scheme to support their workers, seeing little benefit for themselves. This is even though the government covers all the furlough wage costs, up to end-July.

I am sure that some agencies will have used the furlough scheme to support all eligible workers. They will have done this out of concern and commitment for their workers who, after all, generate their profits for them. I expect the agencies that have done this will be rewarded with an enhanced reputation and increased loyalty from their workers and clients. I do not know which agencies have done this; I would love to know!

It appears, though, that other agencies - I have heard stories from workers from other large household-name agencies - have avoided (or, as in Reed's case, reduced) the responsibility of using the scheme to support their workers and refused to furlough eligible workers.

Clarity needed from government/HMRC

I learned that some agencies were concerned about being liable for holiday pay for furloughed workers (a legitimate concern, as this would normally come out of the rate from the client) and were delaying furloughing their workers until this was clarified by the government.

I was pleased to see that the government issued guidance on 13 May, which clarifies that workers like me - who do not receive holiday pay between assignments - would not be entitled to holiday pay while on furlough, so the agency would not have to pay anything.

<https://www.gov.uk/guidance/holiday-entitlement-and-pay-during-coronavirus-covid-19>

(I hoped this would encourage Reed to furlough me, but it did not.)

In the absence of answers from Reed, on 13 May I contacted Neil Carberry, CEO of REC (Recruitment & Employment Confederation) to ask why agencies are refusing to furlough PAYE agency workers, even if they are eligible according to the government. I explained that my agency were stating criteria that are much more restrictive than the government's, ruling out many eligible workers. I asked whether these criteria came from REC. I said I already knew about the holiday pay issue.

I give credit to Neil Carberry for replying the same day. He said:

"...along with holiday pay, the basic law of the CJRS (the so-called Treasury Direction) is a lot more careful about who is eligible than the government advice. This has led to legal advice from some lawyers (not us) that temps can only be furloughed under a few circumstances. I don't think this is right, but it can only be resolved by clarity from the Government. Firms can't bet the company on hoping they are right."

To me, the Treasury Direction looks consistent with the guidance on gov.uk:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879484/200414_CJRS_DIRECTION_-_33_FINAL_Signed.pdf

<https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

However, it appears lawyers for some agencies advised agencies to be more restrictive re who they furlough than the government guidance, and the government needed to provide clarity so that agencies felt confident to furlough everyone who is eligible.

Did the government do this? In my email to Rishi Sunak of 3 May I asked whether the government was speaking to agencies to resolve issues that could be deterring them from using the scheme. I received no reply.

From my own experience, HMRC have been very late in replying to my MP (see [Appendix](#)). It took two weeks for their first reply, which did not address the points my MP has raised, and we have already been waiting a further two weeks for their next reply.

Also re HMRC, in the section above [Support for PAYE agency workers: the government's position](#), I include a quote from Alan Brown MP at PMQs, when he referred to an agency "claiming that it was awaiting clarification from HMRC about furlough".

Changes to the scheme from 1 July: a further 'gap'?

Looking ahead, I think the changes to the scheme from 1 July could mean some agencies (and other employers of PAYE temporary workers) end the support for workers they already have on furlough, even if the workers still have no work and income. This is due to the requirement for the employer to start making contributions to the wage costs - including, from August, employer's NI and pension contributions and, from September, topping up the worker's wages from 70% to at least 80%, for time they are furloughed.

If agencies cannot recover these costs from a client, it is unviable for them to cover the costs themselves - and unreasonable to expect them to do so.

Have the government considered the additional 'gap' for PAYE agency workers they have created with these changes?

Conclusion: is the CJRS fit-for-purpose to provide support for PAYE agency workers and other PAYE temporary workers?

My conclusion is that the CJRS has proved to be **not** fit-for-purpose as a vehicle to provide support for many PAYE agency workers and other PAYE temporary workers.

These workers put as much tax, NI and employer's NI into the coffers as any other PAYE employee. In the best of times, they have no job security. In the worst of times, it feels like they have been left high and dry.

The government guidance is clear that PAYE agency workers are eligible, and the chancellor and prime minister have made statements about this.

However, the scheme relies on the participation of the employer or 'deemed employer'. They are free to refuse to furlough their workers. This has cut off the government support for workers who have been refused furlough.

This means in practice a worker may be eligible for government support, and the government would have covered your wage costs since March (subject to the 80% / £2,500 per month limit), enabling your agency to pay you, but if your agency says 'no' you get nothing. You are entirely in their hands.

Was it unreasonable and misjudged to expect that agencies would use the scheme, even though there is no financial benefit to them? Did the government consider the potential 'gap' caused by agencies refusing to furlough their workers? Would it have been preferable (and more efficient) to enable these workers to apply directly to the government?

In addition, it appears that the government/HMRC have not done all they could to encourage and facilitate agencies to use the scheme to support workers. Have they in fact deterred agencies from using the scheme by not providing the clarity that agencies need?

The #GapsInSupport report proposed a solution (point 53.) that would work for PAYE agency workers.

Suggested next steps

I think it would be very valuable if the committee could investigate these questions:

How many PAYE agency (and umbrella company) workers received support through the scheme and how many received none, even though they were eligible according to the government's criteria?

- What proportion of eligible workers on agencies' payroll received support?
- How many people requested support and were turned down?
- I realise it would be a big exercise to go directly to agencies. Perhaps you could ask bodies such as [REC](#) and [FCSA](#) for data and insight?

What deterred agencies from furloughing eligible workers?

See the section above [Why haven't agencies \(and other employers of PAYE temporary workers\) furloughed workers who are eligible for support? Potential reasons.](#)

- Again, perhaps [REC](#) and [FCSA](#) could provide insight on this?

Did the government consider the 'gap' inherent in the CJRS - workers who were eligible for support but refused furlough by their employers?

- Could the government/HMRC have done more to support agencies to use the scheme?
- Did they provide as much clarification and guidance to agencies as they could have done, to provide agencies with the reassurance they needed to be confident they could furlough everyone described as eligible in the government guidance?
- Have the government/HMRC in fact deterred agencies from using the scheme?

The solution

The #GapsInSupport report has already proposed a solution (point 53.) that would work for PAYE agency workers and other PAYE temporary workers.

However, as I said in the [Introduction and summary](#), I think it would be helpful for the report to:

1. Note that people in many industries work on short-term contracts
2. Note that these people may be employed directly by an employer, or deliver work for a client through an agency or umbrella company
3. Recommend that the solution applies to all people in short-term contracts who are eligible for support under the CJRS, but whose employer (or 'deemed employer' in the case of an agency or umbrella company) refuses to furlough them

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